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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/597,277	VIGNOLI ET AL.	
	Examiner	Art Unit	
	YU ZHAO	2169	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 January 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Response to Amendment

1. Acknowledgment is made of applicant's amendment filed on **January 21, 2009**.

Claims 1-21 are presented for examination.

Claims 1-21 are amended.

Specification Objections are withdrawn in light of amendment by the applicant.

Claim Objections is withdrawn in light of amendment by the applicant.

35 USC 101 Rejections on claims 1-16 are withdrawn in light of amendment by the applicant.

35 USC 101 Rejections on claims 17-21 are maintained, the reasons are set forth below.

Response to Argument

2. Applicant's arguments filed in the amendment filed on **January 21, 2009**, have been considered but are moot in view of the new ground(s) of rejection.

35 USC 101 Rejection:

Claim 17-21 claimed as method claims that recited purely mental steps. The claim lacks the necessary physical articles or objects (**e.g. processor(s)**) to constitute a machine or a manufacture within the meaning of 35 USC 101.

Specification

3. The amendment filed **January 21, 2009** is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Amended Specification for the paragraph beginning on page 3, line 27 through page 4, line 2, recites "...form one or more sources 110 (e.g., databases of material) to from a playlist 160...," however, the term "databases" has not been disclosed in the original filed application.

Amended Specification for the paragraph on page 7, lines 22-31 recites "...For example, the system 100 may be configured to apply the selector 130/230 to the available sources 110 (e.g., databases of material) on a weekly basis (i.e., a periodic basis), to keep the subset 140 relatively up to date...," however, "a periodic basis" has not been disclosed in the original filed application.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The disclosure is objected to because of the following informalities: the new amended paragraph beginning on page 2, line 27 through page 4, line 2 recites "...Optionally, the playlist generator 100 may also include a rendering device 190 for rendering the material identified in the playlist 160 (e.g., a device for playing a song identified in the playlist)...," which is not clear (i.e. is the playlist 160 or rendering device 190 a device for playing a song identified in the playlist?).

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: In claims 1-10, “apparatus” has not been defined in the specification (i.e. “apparatus” can be broadly interpreted as either “hardware” or “software”).

Appropriate correction is required.

Claim Objections

6. **Claims 1, 11 and 17** are objected to because of the following informalities: the claims recite “...at a first hierarchical level...” (line 4). The specification uses the terminology “highest hierarchical level” (Spec.: page 3, 8-9), “lower level of hierarchy” (Spec.: page 3, 10-11) and “the highest level” (Spec.: page 8, 24-25). Does “first hierarchical level” mean “highest hierarchical level” or “lower level of hierarchical level”? Applicants should use the same terminology in both specification and claims.

Appropriate correction is required.

7. **Claims 1, 6, 11 and 17** are objected to because of the following informalities: the term “is adapted for” is unclear. It has been held that the recitation that an element is “is adapted for” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

8. **Claims 1-10** are objected to because of the following informalities: In claims 1-10, “apparatus” has not been defined in the specification.

9. **Claim 4** is objected to because of the following informalities: Claim 4 recites “...user preferences include long-term, relatively constant preferences...” which is broad

and not clear (i.e. How long is considered as “long-term”?). It leaves the examiner in doubt as to the meaning of the features to which they refer.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 11, and 17 recite the newly added limitation, "...at least one database source of material..." (line 3) "a first selector device" (line 2) and "a second selector device" (line 9), however, these terms have not been disclosed in the original filed application. The introduction of claim changes which involve narrowing the claims by introducing the newly added elements or limitations.

Claims 1, 11 and 17 recite the newly added limitation "wherein the first selector device is configured to access and search available database sources of material on a periodic basis to maintain..." however, the term "periodic basis" has not been disclosed in the original filed application. The introduction of claim changes which involve broadening the claims by introducing the newly added elements or limitations. (i.e.,

“weekly basis” does not include “monthly basis” and “yearly basis”. However, “periodic basis” includes “weekly basis”, “monthly basis” and “yearly basis.”).

Claims 2-10, 12-16 and 18-21 are rejected with the substantially similar reason as above.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

- a. Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 17-21 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

As to **claims 17-21**, “A method of generating a playlist...” claimed as method claims that recited purely mental steps. The claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. As such, they fail to tie with a statutory category. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

To expedite a complete examination of the instant application the claims rejected under 35 U.S.C. 101 (nonstatutory) above are further rejected as set forth below in

anticipation of applicant amending these claims to place them within the four categories of invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-5, 11-13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton).

For claim 1, Hoch discloses a playlist generator apparatus comprising:
a first selector device that is configured access and to search at least one database source of material and to provide therefrom a first subset of identifications of items within the at least one database source of material at a first hierarchical level, based on a first set of parameters corresponding to a first set of user preferences, further wherein the first selector device is configured to access and search available database sources of material, (Hoch: page 1, paragraph [0006], “When a request to search for a content in a community is received, a search is performed for the content at one or more nodes of the community.”, page 4, paragraph [0046], “list of

contents, such as music or movies, may be collected from one or more peers within a community through a **multilevel hierarchical searching** method based on a user's persona information using a learning mechanism.", page 5, paragraph [0058], "when a user **initiates a search, a set of parameters** 301 may be used to specify how the search is being conducted. In one embodiment, these **parameters are set up** at run time when the user **initiates the search**...a search result includes clusters of nodes having contents in genres A to D.", where "first hierarchical level" is read on "initiates a search", "first set of parameters" is read on "a set of parameters" and where "a first subset of identifications of items" is read on "a search result" at initial search), **and a second selector device operatively coupled to the first selector device, wherein the second selector device is configured to search the first subset of identifications at a subsequent hierarchical level based on a second set of parameters corresponding to a second set of user preferences** (Hoch: page 4, paragraph [0046], "The contents searched and received from the one or more peers **may be filtered using multiple levels of details** and a learning algorithm...based on a user's persona information.", where "levels" indicates numbers of filtering processes, where "second set of user preferences" is read on "multiple levels of details", page 5, paragraph [0059], "...This information may be used by the search during a subsequent search...", paragraph [0061], "When a user **selects an area from a**

search result displayed, such as area 305, **the search will conduct another search** and retrieves relevant information **from** the peers related to **the selected area**. When a user selects area 305, the search conducts a search and filters the information collected from the peers based on persona information of the user, as well as the user's past preferences or behaviors collected by the learning mechanism...", where "a second selector device" and "search the first subset of identifications " are read on "the search will conducts another search", and where "a second set of user preferences" is read on "filters the information collected from the peers based on persona information of the user", paragraph [0062], "...when a user selects an area from the display of the level shown in FIG. 3B, the search may display further detailed information from the search result, such as information 310 regarding to specific artists of the songs derived from those genres or sub-genres", Fig. 3A-3D), **and to provide therefrom a second subset of identifications of items within at least one database the source of material, wherein the second subset corresponds to a playlist that is adapted for use by a rendering device for a subsequent rendering of the items identified in the second subset** (Hoch: page 7, paragraph [0075], "If, at block 607, the user is not satisfied with the result, at block 606, the user may select a portion of the search result from the display or view by, for example, circling an area in which the user may be

interested. The above processes may be repeated until the user is satisfied with the results." where "second subset of identification of items" is read on "select a portion of the search result").

However, Hoch does not explicitly disclose device is configured to access and search available database sources of material on a periodic basis to maintain the first subset of identifications of items up to date.

Barton discloses device is configured to access and search available database sources of material on a periodic basis to maintain the first subset of identifications of items up to date (Barton: page 1, paragraph [0013], "...a personal digital assistant or computer could be specially enabled to act as the interactive service itself by storing the database in its memory and performing the database query and processing without externally accessing the service...In this embodiment, transmission to the service provider would only be needed for additional interaction and potentially for **updates of the music** database, such as **periodically (e.g., weekly)**.");

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning mechanism" as taught by Hoch by implementing "Method and system for interacting with a user in an experiential environment" as taught by Barton, because it would provide Hoch's generator with the enhanced capability of

“...potentially for updates of the music database” (Barton: page 1, paragraph [0013]).

For claim 2, Hoch and Barton disclose the playlist generator of claim 1, wherein

the first set of parameters comprise parameters corresponding to time-independent user preferences (Hoch: page 4, paragraph [0046]-[0057], “Interests...Artist lists...”, where “time-independent” is read on “artist list”, page 5, paragraph [0058], “FIG. 3A, when a user initiates a search, a set of parameters 301 may be used to specify how the search is being conducted.”), **and**

the second set of parameters comprise parameters corresponding to user preferences at a particular time (Hoch: pages 3-4, paragraph [0040], pages 4-5, paragraph [0046]-[0058], “interest...Favorite songs...Favorite artists...Rating of a user...Mood of a song...Words of the song (e.g., lyrics) The above set of information may be used as parameters, when a user conducts a search, to match people or match a song profile with a person.”, where “user preferences at a particular time” is read on “mood of a song”).

For claim 3, Hoch and Barton disclose the playlist generator of claim 1, wherein

the first set of parameters comprise parameters corresponding to event-independent user preferences (Hoch: page 4, paragraph [0046]-[0057], page 5, paragraph [0058]), and

the second set of parameters comprise parameters corresponding to user preferences upon an occurrence of an event (Hoch: pages 3-4, paragraph [0040], pages 4-5, paragraph [0046]-[0058], where “occurrence or an event” is read on “Mood of a song”, (i.e. event-specific, when during an love/romantic event, the user would like to play love or romantic songs)).

Claim 4 is rejected as substantially similar as claim 2, for the similar reasons.

For claim 5, Hoch and Barton disclose the playlist generator of claim 1, wherein the database source of material includes one or more internet web-sites (Hoch: page 2, paragraph [0029]-[0030]).

Claim 11 is rejected as substantially similar as claim 1, for the similar reasons.

Claim 12 is rejected as substantially similar as claim 2, for the similar reasons.

Claim 13 is rejected as substantially similar as claim 5, for the similar reasons.

Claim 17 is rejected as substantially similar as claim 1, for the similar reasons.

Claim 18 is rejected as substantially similar as claim 2, for the similar reasons.

12. **Claims 6, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton) as applied to claims**

1, 11 and 17 above, in view of Salam et al. (U.S. Patent No.: U.S. 6,594,654 B1, hereinafter, Salam).

For claim 6, Hoch and Barton disclose the playlist generator apparatus of claim 1, further including non-volatile memory that is configured to store the first subset of identifications, where the second selector device is further configured to search the first subset of identifications at the subsequent hierarchical level, based on a third set of parameters corresponding to a third set of user preferences, and to provide therefrom a third subset of identifications of items within the database source of material, wherein the third subset corresponds to another playlist that is adapted for use by a rendering device for a subsequent rendering of the items identified in the third subset (Hoch: page 5, paragraph [0058]-[0062]).

However, Hoch and Barton do not explicitly disclose store the first subset.

Salam discloses store the first subset (Salam: column 10, lines 52-56, " a first set of raw search results 50a are stored...The first set of search results 50a which includes listings 1-7 are processed to obtain a second set of results 50b.").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning mechanism" as taught by Hoch by implementing "Systems and methods for continuously accumulating research information via a computer network" as taught by Salam, because it would provide Hoch and Barton's generator

with the enhanced capability of ““filtering” the information by categorizing the cards as a function of quality or state of currency or completeness, etc., (6) selecting and retaining those items of information that satisfy the researcher's goals” (Salam: column 2, lines 55-59).

Claim 14 is rejected as substantially similar as claim 6, for the similar reasons.

Claim 21 is rejected as substantially similar as claim 6, for the similar reasons.

13. **Claims 7-9, 15, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton) as applied to claims 1, 11 and 17 above, in view of Breese et al. (U.S. Patent No.: U.S. 6,006,218, hereinafter, Breese).**

For claim 7, Hoch and Barton disclose the playlist generator apparatus of claim 1, wherein

the first set of parameters includes one or more parameters for searching the database source of material based on a frequency of access of the items within the database source of material (Hoch: page 4, paragraph [0040], “persona information for a user of a device may include a set of attributes such as, an artist list, a song list, a favorite song list, a favorite artist list, rating of users,”, paragraph [0041], “persona information associated with a user of a device is

automatically collected. For example, a list of interests of a user of the device 5 may be automatically generated by recording the web sites the user visits, the music the user listens to, the films the user watches, etc.", page 5, paragraph [0058], "these parameters are set up at run time when the user initiates the search. Alternatively, these parameters may be collected automatically based on **user's current or previous behaviors.**"), and

the first selector device is further configured to determine a measure of requests for each item within the database source of material by a plurality of users, and to provide therefrom the first subset of identifications of items, based on the measure of requests for each item (Hoch: page 2, paragraph [0027], page 7, paragraph [0080], where "measure of request for each item" is read on "popular").

However, Hoch and Barton do not explicitly disclose based on a frequency of access of the items, and

measure of requests for each item within the source material by a plurality of users.

Breese discloses based on a frequency of access of the items (Breese: column 8, lines 16-24, "In step 222 input relating to, e.g., the search to be performed, user attributes, user preferences and/or the user's existing knowledge about items included in the information database to be searched, is obtained...may provide

information on which sites a user likes based on a user's frequent access of certain sites..."), **and**

measure of requests for each item within the source material by a plurality of users (Breese: column 2, lines 53-55, "In order to generate the knowledge probability estimates, factors which may be considered include: the popularity of the individual data items being searched..." Column 2, line 65-column3, line 7, "Collaborative filters generate, using historical information on a large number of individuals preferences and information on the attributes and preferences of a particular user, a list of recommendations sorted by their estimated value to the user. The historical information relating to an item's popularity used to perform a collaborative filtering operation may also be used to generate knowledge probability estimates in accordance with the present invention. For this reason, collaborative filters are particularly well suited for use with the present invention.", where "measure of requests" is read on "popularity").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning mechanism" as taught by Hoch by implementing "Methods and apparatus for retrieving and/or processing retrieved information as a function of a user's estimated knowledge" as taught by Breese, because it would

provide Hoch and Barton's generator with the enhanced capability of "an improved method of making recommendations or suggestions to the user regarding other Internet sites or data items which might be unknown but interesting to the user." (Breese: column 3, lines 8-31).

Claim 8 is rejected as substantially similar as claim 4, for the similar reasons.

Claim 9 is rejected as substantially similar as claim 3, for the similar reasons.

Claim 15 is rejected as substantially similar as claim 7, for the similar reasons.

Claim 16 is rejected as substantially similar as claim 8, for the similar reasons.

Claim 19 is rejected as substantially similar as claim 7, for the similar reasons.

Claim 20 is rejected as substantially similar as claim 2, for the similar reasons.

14. **Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton), and further in view of Breese et al. (U.S. Patent No.: U.S. 6,006,218, hereinafter, Breese) as applied to claim 7 above, and further in view of Salam et al. (U.S. Patent No.: U.S. 6,594,654 B1, hereinafter, Salam).**

Claim 10 is rejected as substantially similar as claim 6, for the similar reasons.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YU ZHAO whose telephone number is (571)270-3427. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mahmoudi, Tony can be reached on (571) 272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-270-4427.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date: 4/22/2009

/Yu Zhao/

Examiner, Art Unit 2169

/Yicun Wu/

Primary Examiner, Art Unit 2158